

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
DANIEL LARIOS,)	CASE NO. 08-21508 JPK
)	Chapter 7
Debtor.)	

ORDER FOR HEARING

On September 16, 2008, the court received a letter dated September 11, 2008 under the signature of Attorney Joseph C. Lehman, to which was attached a document which appears to be designated as "Motion to Re-Open Case" [with the Division of the United States Bankruptcy Court designated as South Bend, instead of Hammond] {"the document"}, and which was accompanied by a photocopy of a check under the signature of the debtor payable to Joseph C. Lehman. Apparently, Attorney Lehman also paid the \$260.00 fee for re-opening this case. The document, apparently purporting to be a motion, requests re-opening of the case "for reason that debtor has not yet had the opportunity to complete the re-affirmation process with one of his secured creditors". The record discloses that a reaffirmation agreement between the debtor and Wells Fargo Home Mortgage was filed on August 1, 2008. This agreement was not accompanied by a motion requesting its review by the court, and therefore no further action has been taken with respect to that agreement; N.D.Ind.L.B.R. B-4008-1(a). Perhaps the debtor's counsel is referring to another agreement still in the process of negotiation: if so, in order to be effective, that agreement must have been made before the granting of the debtor's discharge [11 U.S.C. § 524(c)(1)], and if not so made, the motion to re-open is a waste of \$260.00 of somebody's money.

The court does not usually review reaffirmation agreements unless a motion for their approval has been filed. However, due to the nature of the purported motion to re-open, the court has reviewed the reaffirmation agreement filed on August 1. Part D of that agreement

states that the debtor's monthly income is \$1800.00, his actual current monthly expenses total \$400.00, leaving him \$1400.00 to make requirement payments on the reaffirmed debt.

Because the amount of the monthly payment is \$956.59, the agreement on its face does not disclose an "undue hardship" as defined by 11 U.S.C. § 524(m)(1). However, the Schedule I filed in this case on May 15, 2008 discloses total monthly income of \$1850.00, while Schedule J filed on the same date discloses average monthly expenses of \$2496.00, leaving a negative of \$646.00. This discrepancy invites the court's scrutiny as to whether statements made in the Wells Fargo reaffirmation agreement are true.

IT IS ORDERED that a hearing will be held on **November 12, 2008, at 9:30 A.M.**, at which the following matters will be addressed:

1. Whether or not the court should grant the purported motion to re-open the case;
2. The discrepancy between the information stated in the reaffirmation agreement between the debtor and Wells Fargo Home Mortgage and the information provided in Schedules I and J filed by the debtor in this case.

IT IS FURTHER ORDERED that the debtor Daniel Larios and Attorney Joseph Lehman shall both personally appear before the court at the hearing.

Dated at Hammond, Indiana on October 15, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee